



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Henry Eichinger, d/b/a Autoland USA,

Case No.: TR-00-0043

FINAL DECISION

On May 5, 2000, Dennis J. Anacker, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Henry Eichinger, d/b/a Autoland USA. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. A Preliminary Determination based on the documentation contained in the file and required by § Trans 140.26(4)(a), Wis. Adm. Code, was issued on November 28, 2000. On December 1, 2000, Dennis Anacker filed an objection to the Preliminary Determination pursuant to § Trans 140.26(5)(b), Wis. Adm. Code. Pursuant to due notice a hearing under § Trans 140.26(6), Wis. Adm. Code, was conducted in this matter on December 20, 2000, in Appleton, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with §§ 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Henry Eichinger, d/b/a Autoland USA,
W7181 Highway 10 & 141
Menasha, WI 54952

Dennis J. Anacker
888 East Shady Lane, #305
Neenah, WI 54956

Heritage Mutual Insurance Company
P. O. Box 58
Sheboygan, WI 53082-0058

The Preliminary Determination issued in this matter found that the Dealer violated § Trans 139.04(6)1, Wis. Admin. Code, by failing to indicate on the Wisconsin Buyers Guide that the vehicle purchased by Mr. Anacker had previously been titled in Illinois. However, Mr. Anacker failed to show that he sustained any loss as a result of this violation and his claim was

disallowed. Mr. Anacker filed an objection to the Preliminary Determination and a hearing on his claim was conducted.

The Dealer's failure to disclose the fact that the vehicle had previously been titled in Illinois is clearly a violation. The issue is whether Mr. Anacker suffered any loss as a result of the violation. At the hearing, Mr. Anacker testified that he would not have purchased the subject vehicle if he had known that it had previously been titled in Illinois. There is no way to measure the difference in value of a vehicle that has been previously titled in Illinois compared to a vehicle which has only been titled in Wisconsin. Absent such a measure, the most reasonable settlement of this matter would have been to simply rescind the transaction. In other words, Mr. Anacker would return the vehicle to the Dealer and the Dealer would return Mr. Anacker's trade-in to him along with the additional cash he paid for the subject vehicle. This settlement is not possible because Mr. Anacker no longer owns the subject vehicle and the Dealer no longer owns Mr. Anacker's trade-in.

The other possible method to calculate Mr. Anacker's loss would be to reimburse him for the cost of repairing any problems with the vehicle which are related to its history of having been titled in Illinois. Mr. Anacker did produce an estimate from AllCar listing recommended repairs to the vehicle along with the cost of such repairs. (A copy of this document was previously submitted but was partially unreadable.) After reviewing this exhibit, it appears, as found in the Preliminary Determination, that the majority of recommended services are routine maintenance for a twelve-year old vehicle. The AllCar diagnostician even expressly indicated that at least one of the recommended services is based solely on the vehicle's mileage.

It should be noted that although Mr. Anacker owned the vehicle for six months before he started having problems with it, he drove it less than 1500 miles during that time period. Mr. Anacker believes that since he used the vehicle so little during the time he owned it, the problems he experienced must have existed at the time he purchased it. However, Mr. Anacker did test drive the vehicle before purchasing it and testified at the hearing that none of the problems were present during the test drive. Regardless of where the vehicle was previously titled, the Dealer does have an obligation to perform a reasonable presale inspection of the vehicle. Based on the presale inspection, the Dealer is required to disclose any problems with the vehicle to prospective buyers.

There is no evidence in the record that any of the problems Mr. Anacker experienced with the vehicle in December of 1999, should have been discovered by the Dealer during the presale inspection or that they were in any way related to the vehicle's history of having been titled in Illinois. After considering the evidence presented at the hearing, there is no basis to reverse the Preliminary Determination issued in this matter. The only amendment to the Preliminary Determination is that the services recommended by AllCar are now listed in paragraph five of the Findings of Fact. Other than this amendment, the Preliminary Determination is adopted as the Final Decision in this matter.

FINDINGS OF FACT

1. Henry Eichinger, d/b/a Autoland USA, (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer with facilities located at W7181 Highways 10 & 141, Menasha, Wisconsin, 54956.
2. The Dealer has had a surety bond in force from April 16, 1997 to the present date (Bond #SO2001 from the Heritage Mutual Insurance Company).
3. On June 30, 1999, Dennis Anacker agreed to purchase a 1987 Chevrolet Celebrity automobile, vehicle identification number 1G1AW51W2H611017, from the Dealer. According to the Used Motor Vehicle Purchase Contract, Mr. Anacker paid \$2,995.00 (less an allowance for Mr. Anacker's trade-in vehicle) for the vehicle and purchased it "As Is—No Warranty."
4. On the Wisconsin Buyers Guide completed for the vehicle the Dealer disclosed the condition of the vehicle as having no mechanical problems and that all applicable equipment was legal. The Wisconsin Buyers Guide includes a space at which a dealer can list any other jurisdictions in which the vehicle has previously been titled. The Dealer left this space blank; however, the title history for the vehicle shows it was previously titled in Illinois.
5. In the middle of December, 1999, the vehicle began to run poorly. Mr. Anacker took the vehicle to AllCar Automotive Center in Appleton (AllCar) to have the problems with the vehicle evaluated. AllCar produced a list of recommended services for the vehicle (Exh. 7). The list of recommended services for the vehicle consists primarily of routine maintenance, such as a tune up and replacement of various belts and hoses. The recommended services also mentions leaking transmission lines and transmission and oil pans. There is no evidence that any of these problems existed at the time Mr. Anacker purchased the vehicle from the Dealer.

The services recommended by AllCar and the estimated cost of the services are:

NEEDS TUNE UP WITH WIRES EST \$182.00 + TAX RECOMMEND
COIL PACKS ONLY DUE TO MILEAGE EST \$156.00 + TAX, TRANS
LINES AND PAN LEAKING DIRTY FLUID EST \$155.00+ TAX,
NEEDS UPPER AND LOWER RADIATOR HOSES EST \$68.00 + TAX
AND WATER PUMP EST \$192.00 + TAX, NEEDS SERP BELT EST
\$61.00 + TAX, EXHAUST EST \$120.00 + TAX, OIL PAN IS LEAKING
EST \$208.00 + TAX, INTAKE GASKET EST \$425.00 + TAX, MASS
AIR FLOW SENSOR HAS NO CODES BUT WHEN UNPLUGGED
CAR RUNS BETTER EST \$130.00 + TAX

The total cost of the recommended services is \$1697.00 plus sales tax.

6. On March 7, 2000, Mr. Anacker filed a complainant against the Dealer with the Wisconsin Department of Transportation—Dealer Section (Dealer Section). After an investigation, the investigator assigned by the Dealer Section was unable to resolve the

complaint. On May 5, 2000, Mr. Anacker filed a claim against the surety bond of the Dealer. The claim is in the amount of \$4,795.00 and is itemized by Mr. Anacker as follows:

Car, would not have purchased, had I known it was from Ill.	\$1,700.00
Trade-in for Pickup	\$1,295.00
3 trips to Chilton—Court Costs	
2 lost days from work for Court	
Have had to purchase another car	\$1,800.00
Autoland lied in Court and put me in a financial bind	

7. The Dealer's failure to disclose on the Wisconsin Buyer's Guide that the vehicle had previously been titled in Illinois constitutes a violation of § Trans 139.04(6)1, Wis. Admin. Code. Although the Dealer did violate § Trans 139.04(6)1, Wis. Admin. Code, Mr. Anacker has not shown that he suffered any loss as a result of this violation. Mr. Anacker does not allege he had any problems with the vehicle until six months after he purchased it. Six months after Mr. Anacker purchased the vehicle the engine began to run poorly. The service recommended for the vehicle appears to primarily consist of routine maintenance for a twelve-year-old vehicle.

8. Dennis Anacker filed his bond claim within three years of the ending date of the period the Heritage Mutual Insurance Company bond was in effect and it is, therefore, a timely claim.

9. The Dealer's failure to disclose on the Wisconsin Buyers Guide that the vehicle purchased by Dennis Anacker had previously been licensed in Illinois constitutes a violation of § Trans 139.04(6)1, Wis. Admin. Code. However, Mr. Anacker has not provided sufficient documentation to show he sustained any loss as a result of as a result of this violation. Accordingly, the claim is not allowable.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Admin. Code. Section Trans 140.21(1), Wis. Admin. Code provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

To allow Mr. Anacker's claim, a finding must be made that the Dealer violated one of the sections of § 218.01(3)(c), Stats., listed in § Trans 140.21(1)(c)1, Wis. Admin. Code, and that the violation caused the loss sustained by Mr. Anacker. The Dealer did violate one of the sections of § 218.01(3)(a), Stats., listed in § Trans 140.21(1)(c)1, Wis. Admin. Code. The issue in this case is whether the violation caused a loss Mr. Anacker. There is no evidence in the file that any of the problems Mr. Anacker experienced with the vehicle are in any way related to the fact that the vehicle had previously been titled in Illinois. Accordingly, the claim is not allowable.

CONCLUSIONS OF LAW

1. Dennis Anacker's claim arose on June 30, 1999, the date he purchased the subject vehicle from Henry Eichinger, d/b/a Autoland USA. The surety bond issued to Henry Eichinger, d/b/a Autoland USA, by Heritage Mutual Insurance Company was in effect at this time. The claim arose during the period covered by the surety bond.

2. Mr. Anacker filed a claim against the motor vehicle dealer bond of Henry Eichinger, d/b/a Autoland USA, on May 5, 2000. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to § Trans 140.21(1)(d), Wis. Admin. Code, the claim is timely.

3. The failure of Henry Eichinger, d/b/a Autoland USA, to disclose on the Wisconsin Buyers Guide that the vehicle purchased by Dennis Anacker had previously been licensed in Illinois constitutes a violation of § Trans 139.04(6)1, Wis. Admin. Code. A violation of § Trans 139.04(6)1, Wis. Admin. Code, in turn, constitutes a violation of § 218.01(3)(a)14, Stats., (now renumbered as § 218.0116(1)(gm), Stats.), which is grounds for suspension or revocation of the Dealer's motor vehicle dealers license. However, Mr. Anacker has not provided sufficient documentation that any loss he sustained was caused by an act of Henry Eichinger, d/b/a Autoland USA, that would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to § Trans 140.21(1)(c), Wis. Admin. Code, the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order

ORDER

The claim filed by Dennis J. Anacker against the motor vehicle dealer bond of Henry Eichinger, d/b/a Autoland USA, is DENIED.

Dated at Madison, Wisconsin on January 11, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705-5400
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By: _____

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with § 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to § 227.49, Stats. Rehearing may only be granted for those reasons set out in § 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under §§ 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of §§ 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of §§ 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.